

U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises



Public Statement

Specific Instance between International Union of Food,
Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied
Workers' Association (IUF) and Mondelez International for
operations in Pakistan

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Contact Point

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I. Introduction

This Final Statement concludes consideration by the United States National Contact Point (U.S. NCP) for the OECD Guidelines for Multinational Enterprises (Guidelines) of the Specific Instance submitted by International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers' Association (IUF) on December 18, 2013. The U.S. NCP's review of the submission revealed complaints regarding renewal of a collective bargaining agreement with the local union, Cadbury Pakistan Progressive Employees Union (Cadbury) as well as demands for regularization of contract employees currently working at Mondelez Pakistan Ltd., (Mondelez) facilities and Mondelez complaints regarding alleged abuse of the NCP process to further a broader agenda to coerce the company into a bilateral relationship with the IUF.

II. Context and Background on the U.S. NCP

The OECD Guidelines for Multinational Enterprises (MNEs) are voluntary, non-binding recommendations for responsible business conduct in a global context. The Guidelines are addressed to MNEs operating in or from the territories of governments adhering to the OECD's Declaration on International Investment and Multinational Enterprises, of which the Guidelines form one part. Adhering governments have committed to a) encouraging their MNEs to follow the Guidelines in their global operations and b) appointing a national contact point (NCP) to assist parties in seeking a consensual resolution to issues that may arise under the Guidelines.

As a part of its function, the U.S. NCP addresses issues arising in relation to implementation of the Guidelines, raised in the form of a Specific Instance, about the business conduct of an MNE operating in or headquartered from the United States. The office handles such issues in accordance with procedures it has adopted for this purpose, which are available on this public website: <http://www.state.gov/e/eb/oecd/usncp/specificinstance/index.htm>. In such circumstances, the U.S. NCP's primary function is to assist affected parties, when appropriate, in their efforts to reach a satisfactory and consensual resolution to the issues raised under the Guidelines. The U.S. NCP's role is to take up issues that are amenable to a consensual resolution under the Guidelines and, where appropriate, make recommendations as to how the enterprise might make its business practices more consistent with the Guidelines. The U.S. NCP does not

make a determination whether a “violation” of the Guidelines has occurred, and the U.S. NCP does not have legal authority to adjudicate disputes submitted under this process.

III. The Specific Instance

On December 18 2013, the IUF filed a Specific Instance with the U.S. NCP raising concerns about the actions of Mondelez in its operations. Given the contentious nature of the submissions and their volume, and in an effort to ensure that the complaints of both parties are accurately presented, the USNCP requested a statement from the IUF and Mondelez for inclusion in this final determination.

The verbatim statement of the IUF follows below:

A) IUF Complaint

The IUF complaint alleged that the company’s employment system at the Cadbury factory in Hub, Balochistan, where only 53 (now 49) workers are employed on direct, permanent employment contracts out of a total workforce of nearly 700, embodied numerous abuses which breach the Guidelines. The product is successful, production is expanding but there has been a decline in the number of direct employment contracts even as the business has grown and total employment has increased.

The vast majority of workers manufacturing Cadbury products in Pakistan have no job security and are employed on a “nor [sic] work, no pay” basis. They do not enjoy the same benefits as the 49 permanent workers, though many have continuously performed exactly the same jobs, in some cases for as long as 7 years. The majority of these casual workers have never been enrolled in the statutory Employees’ Old-Age Benefits Institution (EOBI) and Social Security programs as required by law, i.e. they are denied sickness and old-age insurance. The IUF alleged that this system constitutes a “disguised employment relationship” which denies rights, as described in the ILO Employment Recommendation 198 referenced in the Guidelines.

Unequal treatment is institutionalized, according to the IUF, as is the denial of fundamental rights affirmed in the Guidelines and relevant international labor and human rights standards. The vast majority of the workforce is excluded from

IUF- Mondelez

membership in the union representing permanent workers and is therefore denied the right to negotiate the terms and conditions of their employment with Mondelez. In 2012, the IUF's affiliated union at the enterprise raised the demand for a negotiated transition to permanent employment of the workers in core manufacturing positions as part of its collective bargaining demands for the renewal of the collective agreement. The company refused and continues to refuse to allow this legitimate concern as a subject for collective bargaining. A two-year retroactive collective bargaining agreement concluded in May 2014 contains nothing on the status of the contract workers, and Mondelez remains unwilling to concede the union's right to negotiate this issue, which the union continues to demand. The IUF contends that many of Mondelez' peer transnationals have negotiated and continue to negotiate on this issue, and supplied evidence of this claim. The company's maintenance of this employment system and ongoing refusal to negotiate legitimate change through the collective bargaining process, according to the IUF, constitute breaches of the human rights due diligence obligation set out in various chapters of the Guidelines.

In the specific instance, the IUF cites Mondelez in violation of the following articles of Chapter V of the Guidelines on Employment and Industrial Relations: Enterprises should, within the framework of applicable law, regulations and prevailing labor relations and employment practices and applicable international labor standards:

- Respect the right of workers employed by the multinational enterprise to have trade unions and representative organizations of their own choosing recognized for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment.

- Promote consultation and co-operation between employers and workers and their representatives on matters of mutual concern.

- Provide information to workers' representatives which is needed for meaningful negotiations on conditions of employment.

- Provide information to workers and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.

-Observe standards of employment and industrial relations not less favorable than those observed by comparable employers in the host country.

The specific instance cites the following violations of Chapter III: Disclosure, which states:

-Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. This information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines or geographic areas.

-Disclosure policies of enterprises should include, but not be limited to, material information on:

- a) the financial and operating results of the enterprise;
- b) enterprise objectives.

In this connection the IUF cited Paragraph 33 in the commentary to the Disclosure chapter as particularly relevant:

-Many enterprises provide information on a broader set of topics than financial performance and consider disclosure of such information a method by which they can demonstrate a commitment to socially acceptable practices. In some cases, this second type of disclosure – or communication with the public and with other parties directly affected by the enterprise's activities – may pertain to entities that extend beyond those covered in the enterprise's financial accounts. For example, it may also cover information on the activities of subcontractors and suppliers or of joint venture partners.

According to the IUF, the company's failure to register many hundreds of workers with the statutory social security and pension schemes constitutes a violation of Chapter I: Concepts and Principles, which states that

-Obeying domestic laws is the first obligation of enterprises.

According to the IUF, employment at the factory has grown considerably in recent years but the job creation has been entirely casual – the number of permanent

workers has even declined, breaching Chapter II: General Policies, stating that enterprises should

-Contribute to economic, environmental and social progress with a view to achieving sustainable development.

The company's practices, according to the IUF, violate the following articles of Chapter II, stating that companies should:

-Carry out risk-based due diligence...,to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed.

Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.

The IUF alleged violations of Chapter IV: Human Rights, specifically the requirement that Enterprises should, within the framework of internationally recognized human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1. Respect human rights which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.

4. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.

5. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

End of IUF Statement.

IUF- Mondelez

Although a statement was also solicited from Mondelez, the company did not respond with an additional submission; rather, we have incorporated a summary of their arguments directly from correspondence received from the company. In addition, we have redacted from the text the name of a specific individual identified by Mondelez.

B) Mondelez Response (verbatim from the company's submissions)

Set out below are relevant facts that need to be considered in evaluating the IUF's assertions.

Inappropriate Use of OECD/NCP Process

The IUF's claims, both in the First Instance Report and publicly, related to the use of contractual workers, the inability for them to form unions and alleged violations of international labor standards, are deliberately misleading and false. [Name Redacted] is also the President of the Coca-Cola Beverages Staff and Workers Union Karachi and member of the steering committee of the IUF Global Alliance of Coca-Cola Workers. This is the same [Name Redacted] who was improperly presented to be part of the local Mondelez workers bargaining committee and conciliation process. Notwithstanding the IUF assertions to the contrary, it is clear that the IUF recognizes that they can organize contractual workers, and that the law permits it. However, they choose not to do so directly but rather their strategy is to use other means like the OECD process, as to organize contractual workers, *"is the most difficult area"*. It is evident that [Name Redacted] comments about the IUF strategy support the Company's position in relation to the IUF motivation and misuse of the NCP process.

IUF Interference in Legitimate Local Bargaining

[Name Redacted] has no employment or other connection to the Company facility. Yet there was a proposal from the union that he be part of the local bargaining committee and conciliation. This was a highly unusual request to have an outsider to the workplace as part of the local process. The only logical conclusion that can be drawn is that it was on behalf of the IUF, as part of its broader strategy campaign as described by [Name Redacted]. This approach, in addition to the

public demonstrations at the facility created confusion, uncertainty and delay within the bargaining process.

[Name Redacted] presence and attempted interference appeared not to be motivated by the issues that are legitimate for bargaining, but rather in furtherance of the IUF political agenda, as evidenced by the enclosed interview notes of [Name Redacted]. This is further evidenced by the demonstrations at the Cadbury location where [Name Redacted] was front and center, and where banners used have the same images as those used by the IUF in its ongoing campaign against the Company.

The illegitimacy of [Name Redacted] as a representative of the local bargaining committee was validated when the Government third party conciliator rejected [Name Redacted] participation in the process, thus agreeing with the Company position.

Successful negotiations pursuant to National Legal Framework for Collective Bargaining

The successful conclusion of the collective bargaining process between the local union (as a legitimate representative of workers) and the Company representatives is conclusive proof of the fact that there is a robust national legal framework in place. This framework provides adequate opportunity for the workers' representatives to have constructive dialogue with the Company, to further its legitimate demands, despite the attempts by IUF and [Name Redacted] to hijack the legal process to further their political objectives.

At the outset, we wish to inform you that notwithstanding the positions put forward by the IUF in the Specific Instance, and consistent with its long and successful labor relations, the union bargaining committee (the legitimate worker representatives) and company representatives continued to negotiate the terms of the collective agreement. We can report that we were successful in utilizing the collective bargaining framework, prescribed under national law, to reach a collective agreement on 08 May 2014. This positive outcome was achieved notwithstanding the IUF interference and its disrespect for local laws related to labor relations.

[In addition,] [t]he Union Subscription Fees have been paid to the Union. There were delays as a result of the Company implementation of a new SAP system that featured anti-corruption compliance requirements that all vendors are to provide account information to receive payments from the Company. The Union refused to provide such information that would allow the Company to make the payments. As a result of the refusal, the Company provided an exception for the Union from the internal compliance controls. Accordingly the Company has made the necessary payments to the Union by check.

End of Mondelez Statement.

IV. The U.S. NCP's Deferred Offer of Good Offices

The U.S. NCP, on the basis of information provided, remains open to facilitating negotiations between Cadbury and Mondelez on those specific issues for which Cadbury, the union representing the direct employees of Mondelez, is clearly competent. However, absent agreement by Mondelez to consider engaging in mediation outside of the negotiations taken place under Pakistani law, the U.S. NCP has no basis upon which to offer its good offices at this time. Nonetheless, the U.S. NCP remains open to revisiting issues related to the collective bargaining agreement between Cadbury and Mondelez and full time employees. We also note that the U.S. NCP, after review of the submissions and discussions with staff at the U.S. Embassy in Islamabad and the U.S. Consulate General in Karachi, finds no compelling evidence that Mondelez is not in compliance with Pakistani law.

The U.S. NCP understands that the formalization of casual/contract workers may merit further examination, as their presence seems, by number alone, to be critical to the work of the permanent workers. We note positively Mondelez's "regularization" of certain contract workers. We believe discussions between Mondelez and the contracting agencies it uses regarding the intent of the Guidelines would also have merit. Although not in contravention of national law, contracting may not always be consistent with the spirit of with the Guidelines Chapter V (or the Comments section, which references ILO Recommendation 198). IUF may be a useful conduit for those discussions, but by no means offers the only avenue for such talks. The issue of contract workers being able to form unions at agencies where they do not work may be a barrier to meaningful bargaining. In that regard, IUF may wish to engage directly with the agencies of the contract

IUF- Mondelez

workers as a more expedient means of redressing alleged inconsistencies with fair labor practices.

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